

Wage and Hour Division, Labor

§ 780.611

and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

An employee meets the tests of being employed in agriculture when he either engages in any one or more of the branches of farming listed in the first part of the above definition or performs, as an employee of a farmer or on a farm, practices incident to such farming operations as mentioned in the second part of the definition (*Farmers Reservoir & Irrigation Co. v. McComb*, 337 U.S. 755). The exemption applies to "any employee" of a farmer whose employment meets the tests for exemption. Accordingly, any employee of the farmer who is employed in "agriculture," including laborers, clerical, maintenance, and custodial employees, harvesters, dairy workers, and others may qualify for the exemption under section 13(b)(13) if the other conditions of the exemption are met.

§ 780.606 Interpretation of term "agriculture."

Section 3(f) of the Act, which defines "agriculture," has been extensively interpreted by the Department of Labor and the courts. Subpart B of this part 780 contains those interpretations which have full application in construing the term "agriculture" as used in the 13(b)(13) exemption.

§ 780.607 "Primarily employed" in agriculture.

Not only must the employee be employed in agriculture, but he must be "primarily" so employed during the particular workweek or weeks in which the 13(b)(13) exemption is to be applied. The word "primarily" may be considered to mean chiefly or principally (*Agnew v. Board of Governors*, 153 F. 2d 785). This interpretation is consistent with the view, expressed by the sponsor of the exemption at the time of its adoption on the floor of the Senate (107 Cong. Rec. (daily ed., April 19, 1961), p. 5879), that the word means "most of his time." The Department of Labor will consider that an employee who spends more than one-half of his hours worked in the particular workweek in agri-

culture, as defined in the Act, is "primarily" employed in agriculture during that week.

§ 780.608 "During his workweek."

Section 13(b)(13) specifically requires that the unit of time to be used in determining whether an employee is primarily employed in agriculture is "during his workweek." The employee's own workweek, and not that of any other person, is to be used in applying the exemption. The employee's employment must meet the "primarily" test in each workweek in which the exemption is applied to him.

§ 780.609 Workweek unit in applying the exemption.

The unit of time to be used in determining the application of the exemption to an employee is the workweek. (See *Overnight Transportation Co. v. Missel*, 316 U.S. 572.) A workweek is a fixed and regularly recurring interval of seven consecutive 24-hour periods. It may begin at any hour of any day set by the employer and need not coincide with the calendar week. Once the workweek has been set it commences each succeeding week on the same day and at the same hour. Changing of the workweek for the purpose of escaping the requirements of the Act is not permitted.

§ 780.610 Workweek exclusively in exempt work.

An employee who engages exclusively in a workweek in duties which come within the exemption under section 13(b)(13) and is paid in accordance with the requirements of that exemption, is exempt in that workweek from the overtime requirements of the Act.

§ 780.611 Workweek exclusively in agriculture.

In any workweek in which the employee works exclusively in agriculture, performing no duty in respect to livestock auction operations, his exemption for that week is determined by application of sections 13(a)(6) and 13(b)(12) to his activities. (See subparts D and E of this part.)